IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 21TH FEBRUARY 2007 / 2ND MAGHA 1928

Crl.MC.No. 326 of 2007()

AGAINST THE ORDERIN CR.345/2006 IN
CMP.9361/2006 of JUDL. MAGISTRATE OF FIRST CLASS COURT, IRINJALAKUDA

.....

PETITIONER/CLAIM PETITIONER:

SHIBU, S/O.MADHAVAN,
MEENUMKOTTUKONAM VEETTIL, VEMBAYAM,
NEDUMANGAD TALUK, THIRUVANANTHAPURAM.

BY ADV. SMT.SREEDEVI KYLASANATH
SRI.K.JITHIN

RESPONDENT/RESPONDENT:

STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 21/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.326 of 2007

Dated this the 21st day of February, 2007

ORDER

The petitioner claims to be owner of a Ford Ikon Car bearing Reg.No.K.L.17-7879. According to him, he had purchased it from the registered owner. That vehicle has been seized by the police. It is the case of the police that a racket of miscreants is working. They purchase totally damaged vehicles from the insurance company. Later, they tamper with stolen vehicle and forge the number of the totally damaged cars in the cars which are stolen. The vehicle in question is one such vehicle. It is really a stolen vehicle. It is really a stolen vehicle. The number has been tampered with. Investigation is in progress. The petitioner has not so far been arrayed as an accused. His contumacious role, if any, is being investigated.

2. The petitioner's application for release was allowed by the learned Magistrate subject to very strict conditions. The petitioner is aggrieved by conditions 3 and 4, which I extract below:

> "3. The petitioners shall produce the bank guarantee for the bond amount or to produce the title deeds of the immovable property in originals of the sureties as security.
>
> 4. Petitioners shall not use the vehicle in any public place without the permission of the Court, except for the purpose of taking those vehicles for safe custody from the police station, and petitioners shall file affidavit undertaking to that effect."

3. The learned counsel for the petitioner submits that the insistence, that bank guarantee must be produced, is causing great hardship and difficulties. He is not being able to offer bank guarantee and as such the vehicle, a costly one is now being exposed to sun and rain. It is getting deteriorated. The condition may be suitably modified avoiding insistence on bank guarantee, so that the petitioner can take the vehicle and ensure its safe keeping till the final disposal.

4. I am satisfied that the third condition can be suitably modified. It is not necessary to insist that the bank guarantee must be produced. It is enough if the petitioner executes a bond for Rs.7 lakhs with two solvent sureties. The learned Magistrate may insist on appropriate documents to prove the solvency of the sureties. No rigid insistence on any particular form of satisfaction need be made. I may hasten to observe that the learned Magistrate must scrupulously ensure that the sureties offered are sufficient and solvent. To this extent, condition No.3 can be modified.

5. The petitioner's grievance about condition No.4 appears to be without any substance, as the decision to release the vehicle to the petitioner appears to have been taken on the basis of the offer made by the petitioner that the vehicle shall not be used without the permission of the Court. Such insistence appears to be justified in view of the controversy raised as to whether the vehicle has been duly

and properly registered. That condition need not be disturbed at this stage. The petitioner shall, of course, be entitled to apply for modification of this condition at a later stage of the investigation. Depending on the facts revealed in the course of the investigation, the acceptability of the prayer for modification of the said condition can be considered. Such an application for modification can be filed by the petitioner at a later stage of the investigation, not at any rate, prior to 31.03.2007.

6. This Crl.M.C is, in these circumstances, allowed in part. Condition No.3 shall stand modified to the above extent.

(R.BASANT, JUDGE)

rtr/-